



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

**ORDER**

DOT ~~1600.17~~

**9-21-90**

Subject: **USE OF RECORDING OR MONITORING EQUIPMENT, PRACTICES, AND  
THE LISTENING-IN OR RECORDING OF TELEPHONE CONVERSATIONS**

1. **PURPOSE.** This Order prescribe the policy of the Department of Transportation (DOT) and implements Title 41 CFR, Part 201-6.2, with regard to the use of listening, recording or monitoring equipment or practices, and the listening-in or recording of telephone conversations. It is issued in the interest of assuring the integrity of Departmental operations and safeguarding the rights to privacy of Departmental personnel and the public.
2. **CANCELLATION.** DOT Order 1600.17A, Use of Recording or Monitoring Equipment and Practices, of 10-29-74.
3. **REFERENCES.**
  - a. 41 CFR 201-6.2, July 1, 1989.
  - b. DOT 3770.2, Agency Administrative Grievance System, dated 9-1-80.
  - c. 18 U.S.C.
  - d. Office of the Attorney General Memorandum to Heads and Inspectors General of Executive Departments and Agencies, dated 11-7-83.
4. **DEFINITIONS.**
  - a. **Consensual.** One party to a telephone conversation has given prior consent to the interception or recording of the conversation.
  - b. **Determination.** A written document (usually a letter) that specifies the operational need for listening-in or recording of telephone conversations. It indicates the specific system and location where it is to be performed, lists the number of telephones and/or recorders involved, establishes operating times and an expiration date, and justifies the use. It is signed by the agency head or the agency head's designee.
  - c. **Listening-in devices.** Devices that can intercept any telephone communication and be used to listen-in or record telephone conversations without the knowledge of one or more of the parties to the conversation.

- d. Nonconsensual. None of the parties to a telephone conversation has given consent to the interception or recording of the conversation.
  - e. Service monitoring. The monitoring of telephone conversations by supervisors to determine the quality of service being provided to the public.
5. POLICY. DOT personnel, in the conduct of their Departmental duties, shall not engage in, attempt to influence any person to engage in, or acquiesce in the clandestine, surreptitious, or other covert use of recording, listening, or monitoring devices or practices, except as provided for by this Order.
6. PROCEDURES.
- a. Nonconsensual listening-in or recording of telephone conversations shall be authorized and handled in accordance with the requirements of the Omnibus Crime Control and Safe Streets Act of **1968** as amended (**18 U.S.C. 2510** et seq.), and the Foreign Intelligence Surveillance Act of **1978** (**50 U.S.C. 1801** et seq.).
  - b. Consensual listening-in or recording of telephone conversations on the Federal ~~Telecommunications~~ System (**FTS**) or any other telephone system approved in accordance with the Federal Property and Administrative Services Act of **1949**, Sections **201** (a)(1) and (**3**); Title **40, U.S.C.**, Sections **481(a)(1)** and (**3**); and implementing regulations thereof is prohibited except under the following conditions:
    - (1) When performed for civilian and military law enforcement purposes in accordance with the Attorney General's guidelines for administration of the Omnibus Crime Control and Safe Streets Act of **1968**, and in accordance with procedures established by the Attorney General. Additional requirements for the documentation of monitoring activities pursuant to this Act are:
      - (a) the identity of the designee who approved this action in advance (see paragraph 7 of this Order); and
      - (b) an emergency procedure for use when advance approval is not possible. Emergency procedures shall be in accordance with the procedures established by the Attorney General.

- (2) may assign the responsibility for approving the determinations, at both headquarters and field locations, under paragraph **6b(3)**, **(4)**, and **(5)**, and for determining that a requirement exists for the recording of a telephone conversation. Assignment of this responsibility shall be no lower than to an Associate Administrator or the Chief, Office of Operations, for the U.S. Coast Guard.
  - (3) may assign the responsibility for authorizing the procurement and use of message announcing/recording and transmitter cut-off switches as provided by paragraph **6c(4)**. The responsibility for this shall be assigned no lower than an Associate Administrator (or comparable level). At field locations, the responsibility shall be assigned to Regional Directors or District Commanders. Request for exceptions in the assignment of responsibilities as mentioned above shall be directed to **the Assistant Secretary for Administration**.
  - (4) authorized to approve determinations, shall maintain a record of the number costs, justification, and precise location of each unit installed. Units shall be removed and the appropriate approving authority shall be so notified as soon as the requirement ceases.
  - (5) shall submit a statement annually to the Assistant Secretary for Administration (Attention: **OST Office of Security, M-70**) setting forth the date to be maintained by **7b(5)** above. The statement shall be current as of July 1 of each year and shall be furnished by July **15** of each year. Additional statements may need to be submitted on an ad hoc basis.
  - (6) shall forward determinations required under paragraph ~~**6b(3)**~~, ~~**(4)**~~, and ~~**(5)**~~, to the **Assistant Secretary for Administration** prior to the beginning of the monitoring operation. Any changes in Operating Administration procedures as they apply to activities authorized under paragraph **6b(3)**, **(4)**, and **(5)** must comply with the same reporting requirements.
- c. The **OST** Office of Security will act as the executive agent for the Assistant Secretary for Administration for the purpose of managing the provisions of this Order.

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**8. EXCLUSIONS.**

- a. For the purpose of **this Order**, recording equipment does not include devices which produce a printed or image record as an inherent feature of a telecommunication system such as a teletypewriter, automatic data processing terminal, facsimile, etc., provided such equipment is not used in **contraxention** of paragraph **6b.**
- b. Operating Administrations that conduct business using telephone systems that automatically transmit and record messages, as in the case of the National Highway Traffic Safety Administration's Auto Safety Hotline, are exempt from the provisions of this Order provided such equipment is FCC approved.

9. **IMPLEMENTING DIRECTIVES.** A copy of implementing directives issued by the Secretarial Offices and Heads of **Operating** Administrations shall be forwarded to **the** Director, Office of **Security, OST,** with **90** days of the effective date of this Order.

**FOR THE SECRETARY OF TRANSPORTATION:**



Paul T. Weiss  
For the Assistant Secretary  
for **Administration**